

OGC HAS REVIEWED.

14 December 1950

Chief of Procurement  
Att:   
Law Division

Revision of Research and Development Contract Form

1. Reference is made to the memorandum of , dated 16 August 1950, on this matter, which has been the subject of various discussions between our two offices. Answers to the inquiries made therein, and other pertinent comments, are set out below.

2. The provision regarding employment of aliens set forth in paragraph 7-104.3 of the ASPR should be inserted in the R&D form, in conformance with the policy established in paragraph 12-901 of the ASPR.

3. The "Changes" provision set out in ASPR 7-103.2 may be used in the R&D form.

4. The copyright clause set out in ASPR 9-202 may be used with the R&D form, as proposed in the referenced memorandum. However, it is felt that this clause does not afford CIA sufficient security protection in certain cases. A suggested copyright clause is attached hereto, for use in contracts where a principal item to be supplied under the contract is copyrightable material in which CIA wishes to have full and exclusive rights of use and reproduction.

5. Article 2 gives the Contractor the right to terminate the contract at any time. It is suggested that this is an unnecessary and undesirable concession to make in the R&D form. In cases where the Contracting Officer believes that the contract should be terminated for some compelling reason of the Contractor, the Contracting Officer may terminate the contract for the convenience of the Government, under the standard termination article attached as Appendix I to the R&D form. This gives the Contractor a favorable termination settlement.

6. The "Definitions" clause in Article 1(c) would appropriately come at the beginning of Article 1 and should include a recital that the term "Director" means the Director of Central Intelligence. In the "Definitions" clause the phrase "by the Contracting Officer" should be deleted, since some of the Authorized Representatives referred to in the various Articles are authorized representatives of the Director and not of the Contracting Officer.

7. The Article on "Inspection" (renumbered 11) erroneously refers to JPR 7-103.5 instead of ASPR 7-103.5. It is believed that ASPR 7-103.5 will prove to be unduly onerous to the Contractor under many R&D contracts. We will be glad to draw up a more flexible clause for use in R&D contracts if you so desire.

8. In the Article on "Security" (renumbered 17) the phrase "as amended" should be inserted after "62 Stat. 862". Article 17 should then continue as follows:

"(b) The provisions of the 'Security Requirements for Contractors', attached to this contract as Appendix IV, are incorporated herein by reference.

"(c) Subcontractors. The Contractor shall cause the provision set out in paragraph (a) of this Article to be inserted in all subcontracts under this contract, where appropriate from a security standpoint. In case of doubt he shall seek, and be governed by, the advice of the Contracting Officer."

9. A caveat is expressed as to the practical application of Article 1(b), entitled "Duration of Subject Work." This type of clause, setting a time limit on the Contractor's right and obligation to proceed, is a safeguard often used by the Government, for fiscal and other reasons, to prevent the work from dragging on indefinitely, and is appropriately used for that purpose. However, when a date for performance is set out in the Schedule, it would be an unwise practice to automatically insert the same date in Article 1(b), since the effect would be to release the Contractor from all obligation to proceed with the work after that date, although the Government might in some cases still desire performance to be completed.

10. This leaves for discussion Article 3 on "Compensation". That Article is in essence the standard government cost-plus-a-fixed-fee provision and is therefore authorized for this type of contract. Several minor changes in wording and arrangement are suggested, as follows:

"(a) Fixed Fee. The fixed fee shall be computed at \_\_\_\_\_ percent of the Maximum Allowable Cost of this contract.

"(b) Maximum Allowable Cost. Actual costs for which the Contractor ... etc.

"(c) (unchanged)

"(d) Allowable Costs (Insert here Article 4(e))."

11. In our discussions it was stated by representatives of your office that a need is felt for a compensation provision providing for calculation of the Fixed Fee on the basis of actual costs incurred, up to the Maximum Allowable Cost. This departure from normal government procurement policy is felt to be necessary in some R&D contracts due to current difficulties in negotiating a reasonable figure for the Maximum Allowable Cost. It is felt by this office that such a provision can legally be used in R&D contracts and would not be in violation of the statutory prohibition against the cost-plus-a-percentage-of-cost system of contracting. The following substitute for paragraph (a) of Article 3 is suggested for use in R&D contracts, where so desired by the Chief of Procurement:

"(a) Fixed Fee. The fixed fee shall be computed at \_\_\_\_\_ percent of the actual cost incurred hereunder, but in no event shall the fixed fee exceed \_\_\_\_\_ percent of the Maximum Allowable Cost set forth in paragraph (b) of this Article 3."

12. It should be emphasized that the contract form here under discussion is only for use in research and development contracts, as certain relaxations have been made to suit the exigencies of that type of work.

2 Encls:

1. Draft Contract Agreement
2. Suggested Copyright Clause

STATINTL

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cc: ✓ Subject  
Chrono

# MISSING PAGE

ORIGINAL DOCUMENT MISSING PAGE(S):

contract agreement